In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1254

STRACHAN SHIPPING CO., ET AL., PETITIONERS

v.

R. J. SHEA, DEPUTY COMMISSIONER,
UNITED STATES DEPARTMENT OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT DEPUTY COMMISSIONER IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 15a) is reported at 406 F.2d 521. The opinion of the district court (Pet. 6a) is reported at 276 F.Supp. 610.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 1969. The petition for a writ of certiorari was filed on April 11, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the courts below properly sustained the Deputy Commissioner's ruling that an adverse jury verdict in a longshoreman's negligence and unseaworthiness suit does not bar recovery under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901, *et seq.*).

STATEMENT

Lester Nehring, a longshoreman employed by petitioner Strachan Shipping Company (Strachan), alleging that he was injured aboard the "*Rio Bermejo*" on January 9, 1964, brought suit against the ship's owner. Strachan was impleaded by the owner and the case was tried. The jury answered the following special interrogatory in the negative: "Did the plaintiff, Lester Nehring, sustain an injury while working aboard the RIO BERMEJO on or about January 9, 1964?" Judgment was entered upon the adverse verdict.

Subsequently, an administrative hearing was held on Nehring's claim for compensation benefits under the Longshoremen's and Harbor Workers' Compensation Act. The Deputy Commissioner rejected petitioners' contentions that he was bound by the jury's verdict. He found that "while performing service as a longshoreman aboard the vessel M/S 'Rio Bermejo' upon the navigable waters, [Nehring] sustained injury resulting in disability. While carrying sacks of bone meal, [Nehring] slipped and fell, injuring his back. As a result of this injury the claimant sustained a fracture of an earlier spinal fusion and underwent a

laminectomy and refusion in November of 1964 at the L4-5 level." (Pet. 1a) The Deputy Commissioner further found that Nehring was disabled by the injury (Pet. 2a) and awarded him compensation (Pet. 4a).

Petitioners then brought this action pursuant to Section 21(b) of the Act, 33 U.S.C. 921(b), to set aside the compensation order as not "in accordance with law", contending that the Deputy Commissioner was foreclosed by the earlier jury verdict. The district court held the jury verdict no bar (Pet. 6a-13a) and the court of appeals affirmed (Pet. 15a-17a), relying on its earlier decision in *Young and Co.* v. *Shea*, 397 F.2d 185, pending on petition for a writ of certiorari, No. 1239, this Term.

ARGUMENT

This case presents the same issues presented by *Young and Co.* v. *Shea*, No. 1239, this Term.

We respectfully submit that the petition for a writ of certiorari should be denied for the reasons set forth in our Brief in Opposition in the *Young* case.

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